#### DCPI 579/2007

### IN THE DISTRICT COURT OF THE

### HONG KONG SPECIAL ADMINISTRATIVE REGION

## PERSONAL INJURIES ACTION NO. 579 OF 2007

BETWEEN

SHABBINA KHOKHAR Plaintiff

and

EUROPE BEAUTY INTERNATIONAL LIMITED Defendant

歐洲美容有限公司

##### Coram: Deputy District Judge J. Ko in Court

Date of Hearing: 4 January 2008

Date of Delivery of Judgment: 4 January 2008

## J U D G M E N T

1. This is the assessment of damages for the personal injuries suffered by the Plaintiff.

2. On 19th November 2005, the Plaintiff went to the Defendant’s beauty salon in Tsim Sha Tsui to remove the hair on her arms in preparation of her wedding in Pakistan in the following month. The Plaintiff was recommended a procedure called Intense Pulse Light (“IPL”) therapy and the cost of treating both her arms and face was $10,000.

3. A beautician of the Defendant, Ms. Yeung Wing-Yee (“Ms. Yeung”), was assigned by the Defendant to perform the procedure on the Plaintiff. As soon as the procedure began on the Plaintiff’s arms, the Plaintiff felt a painful burning sensation on her arms at the locations treated. The Plaintiff asked Ms. Yeung to stop but Ms. Yeung reassured her that the pain and burning sensation was normal. Trusting Ms. Yeung, the Plaintiff continued with the treatment.

4. As a result of the treatment received from the Defendant, the Plaintiff suffered multiple burn wounds over her arms. She commenced this action against the Defendant to claim for damages for personal injuries suffered by her. No intention to defend had been given by the Defendant and interlocutory judgment was entered on 14th May 2007 against the Defendant for damages to be assessed.

5. I am satisfied that the Defendant has been duly notified of today’s assessment, and served with all the necessary documents.

6. The Plaintiff is claiming the following damages:

* 1. $250,000 for pain, suffering and loss of amenities;
  2. a refund of $10,000 for the IPL treatment;
  3. $15,848 medical fees incurred;
  4. $4,462 for purchasing new clothes;
  5. $5,000 for alteration of her wedding dresses; and
  6. $5,000 for the purchase of cosmetics.

7. The Plaintiff’s solicitor has confirmed that there is no claim on future medical expenses, notwithstanding that it was pleaded. I think the concession is sensibly made having regard to the medical evidence which I will come to in a moment.

# PSLA

8. The Plaintiff was aged 28 years old at the time of the incident.

9. After the IPL treatment received from the Defendant on 19th November 2005, the wounds on the Plaintiff arms became red, swollen and painful. The Plaintiff sought treatment from the Accident and Emergency Department of Prince of Wales Hospital on 21st November 2005. She was diagnosed to have suffered burns to both of her arms. The wounds were dressed and she was treated with cream to prevent infection.

10. The Plaintiff attended her family doctor Dr. Ma Tak-Wa for follow-up treatment. Dr. Ma observed multiple bullae and erythematous patches over her arms with great pain and exudates. He diagnosed the Plaintiff to have suffered 2nd to 3rd degree of burn on both arms and recommended daily dressing and treatment. Photographs taken at the examination were produced at the assessment. These photographs confirm the extent and severity of the injury.

11. The Plaintiff recalls at the assessment that it was painful to pull off the old bandages during these redressing and treatments, as the bandages would stick to the burn wounds. She describes that as the most painful experience in her life.

12. The wounds took over a month to heal and the Plaintiff was unable to move her arms because of pain and the bandages. During that period of time, the Plaintiff could not shower, wash her hair, change her clothes by herself, eat certain food, drive, or even type. The Plaintiff also says that the injury has caused sleepless nights and nightmares.

13. On 29th November 2005, the Plaintiff consulted Dr. Ho Ka-Keung who is a specialist in dermatology. Dr. Ho noted multiple burn wound over the Plaintiff’s upper limbs, with 80% being 1st degree burns and 20% being 2nd degree burns. The doctor expected the Plaintiff to have post-inflammatory hypopigmentation which may last for 6 to 12 months.

14. The Plaintiff was examined by a plastic surgeon Dr. Ian Nicholson on 4th November 2006. Dr. Nicholson observed that there was a noticeable area of hyperpigmentation on the posterior aspect of the right shoulder with no hair present. There was also conspicuous areas of irregularly pigmented scar present on the right arm near the elbow region and with no hair. There were three areas of 50 x 15 mm, 40 x 20 mm and 20 x 10 mm of hypopigmented pale scar with a mottled appearance due to irregular pigmentation. Minor pigment irregularity was also evident over scattered area of the arm upon closer inspection. There were also 2 noticeable areas of irregular hypopigmented scar of 10 x 15 mm and 12 x 16 mm near the elbow region of the left arm. Upon closer inspection, mild scattered pigment changes were evident on the remainder of the arm. Dr. Nicholson also observed unwanted dark hair on the Plaintiff’s arms which is evidence of the fact that the Defendant’s IPL treatment has had no effect.

15. Dr. Nicholson opined that the scars are consistent with burn injury from ultra-pulsed light therapy and the Plaintiff has suffered from permanent cosmetic disability. The skin has been burnt and as a consequence pigment irregularity is evident in the burnt areas. Most of the scars have improved to the point that they are only evident upon close inspection. Where the burn was assessed to be deeper near the elbow region, patches of irregular hypopigmented scars are readily evident. In his opinion, the scars would most likely still be noticeable although they should become less evident over time. Plastic surgery, laser or further IPL treatment will not improve the appearance of the scars. The mild hypersensitivity in the region of the right elbow scar may diminish in the course of time.

16. Prior to the injury, the Plaintiff was active in hiking, swimming and playing badminton. The Plaintiff says she has suffered great anxiety in the lead up to her wedding as a result of the injury. She has also suffered embarrassment during and after her wedding. As a result of the injury, the Plaintiff feels she has to hide her arms at all times and she no longer feels comfortable wearing clothing and take part in activities that exposes her arms.

17. There is really nothing for me to cast doubt on the Plaintiff’s case. Her testimony is consistent with the photographs and the medical evidence adduced. I accept the Plaintiff’s testimony.

18. The Plaintiff’s solicitor invites me to note 8 factors when assessing damages for PSLA:

1. intense physical pain in the immediate aftermath;
2. physical inconvenience during the course of the recovery process;
3. residual restriction in lifestyle;
4. anxiety, especially due to the scheduled wedding;
5. permanent scarring;
6. embarrassment, which is exacerbated by young age and gender;
7. unable to engage in sports which the Plaintiff used to enjoy; and
8. restriction in clothing that she can wear.

19. He relies on *Li Chim Ying v. Lam Siu Nam*, HCA 3527/1984, *Cheang Kam Ian v. HK Prime Printing Co*, HCPI 143/2998, *Leung Ka-yee v. L&Y Beauty Centre Limited*, DCPI 196/2003, *Fung Wai Han v. Hui Chik Keung* [2006] 4 HKLRD 549, and *Lawati Bhawani Bikram v. Ting Kau Contractors Joint Venture*, CACV 3/2002 and suggested the figure of $250,000.

20. In my view, the injuries involved in *Fung Wai Han* and *Lawati Bhawani Bikram* are different nature and much more serious than the injuries suffered by Plaintiff. So they are of no assistance.

21. In *Li Chim Ying*, the plaintiff was knocked down by a taxi and suffered a fracture of her left humerous bone of the upper arm and a fracture of the pelvis. The learned Master awarded $80,000 in 1985 for the cosmetic injury to the plaintiff’s left shoulder. He observed that the scar was not visible when the plaintiff was normally dressed, but that the plaintiff was young, attractive and went swimming regularly as advised by the doctor. He described the scar as unsightly and always would remain a source of embarrassment. The solicitor for the Plaintiff in this case submits that the present day value of the $80,000 award is about $196,000.

22. In my view, the cosmetic injury suffered by the plaintiff in *Li Chim Ying* is very different from the Plaintiff in this case. The medical expert in *Li Chim Ying* described the injury as follows:

“This girl has a conspicuous ugly scar on the front of the left shoulder. The scar is 85 mm in length and has stretched to 23 mm in width in parts. The scar is dark red with numerous bright red vascular marks across and contains patches of yellow pigment at the site of previous cortisone in injections. The whole area appears sunken below the level of surrounding tissues and the scar is "paper thin" presumably as a result of excessive subcutaneous atrophy from the cortisone injection. She also has several strial marks adjacent to the scar again presumably from atrophy following cortisone injections. … This girl has permanent cosmetic … disability as a result of her accident. Her scar is ugly and will remain so. Plastic surgery could possibly improve the appearance of the scar by 50%-70% but noticeable residual scar would always remain. As she has twice developed keloidal scar in this site there is also a strong possibility of a similar scar forming. Cost of plastic surgery would be $10,000; inclusive of after care.”

23. As such, the award for cosmetic injury in *Li Chim Ying* is not helpful to the assessment in this case.

24. The $200,000 awarded for PSLA in *Cheang Kam Ian* took into account not just residual cosmetic disabilities but residual pain which was supported by evidence from orthopaedic experts at trial in that case. Thankfully, there is no evidence that the Plaintiff will suffer any residual pain in this case.

25. In *Leung Ka-yee*, the plaintiff suffered 2nd degree burn to her back as a result of IPL treatment. She was diagnosed to have post-inflammatory hyperpigmentation and hypopigmentation and scars due to burn. It took her 2 months for the pain and discomfort to subside, during which she could not sleep. She was left with 4 columns of rectangular hyperpigmented scars on her back covering most of the upper and lower back. The resultant scars had caused embarrassment and she would no longer wear clothing that would show her back. Because of pigmentation, she also had to avoid sun exposure by covering her back. The learned Judge awarded the plaintiff $75,000 in 2003 after reviewing some UK and local authorities.

26. The injuries suffered by the Plaintiff in this case is more serious than that in *Leung Ka-yee*. I accept that the Plaintiff has suffered much pain from the injury. The Plaintiff has also suffered much anxiety and embarrassment due to her wedding. The location of the injuries has also meant more loss of amenities to the Plaintiff in this case comparing to *Leung Ka-yee*. Taking everything into account, including the factors highlighted by the Plaintiff’s solicitor, a reasonable amount to compensate the Plaintiff for pain, suffering and loss of amenities would be $120,000.

# Special damages

27. Based on the opinion of Dr. Nicholson that the IPL treatment has had no effect in removing the unwanted hair on the Plaintiff’s arms, the $10,000 costs of the treatment should be refunded.

28. The claim for medical fees at $15,848 is supported by evidence and should be allowed.

29. I accept the Plaintiff’s evidence that she needed to purchase new clothing with loose sleeves so that she could bend her arms. She has produced receipts totaling $4,462 and I allow this amount of claim.

30. I accept the Plaintiff’s evidence that she has expended about $5,000 to alter her wedding dress so as to hide the scaring on her arms on her wedding day. She explains that she asked villagers in her native village in Pakistan to alter her wedding dress and so there is no receipt. I accept her explanation.

31. The claim for the cost of cosmetics is not supported by receipts. However, in view of the close proximity in terms of time between her injury and her wedding, I am prepared to accept the Plaintiff’s evidence that she has spent about $5,000 on cosmetics to hide the scarring.

# Conclusion

32. I therefore assess the damages suffered by the Plaintiff as follows:

1. PSLA $120,000
2. Refund of IPL treatment $10,000
3. Medical fees $15,848
4. Cost of new clothing $4,462
5. Alteration of wedding dresses $5,000
6. Cost of cosmetics $5,000

33. Interest at 2% per annum is awarded on the $120,000 for PSLA from the date of the writ until the date of judgment. Interest at the judgment rate is awarded for the $10,000 refund from the date of the writ until the date of judgment. Interest at half the judgment rate is awarded for the other special damages from 19th November 2005 (i.e. the date of incident) until the date of judgment.

34. The Plaintiff’s solicitor is directed to calculate the total amount of damages for the purpose of drawing up the judgment.

35. There is no reason why costs of this assessment should not follow the event. I therefore order the Defendant to pay the Plaintiff’s costs of this assessment (including all reserved costs) to be taxed if not agreed.

(J. Ko)

Deputy District Judge

Mr. Lewis Man, of Messrs. Laracy Gall, for the Plaintiff

The Defendant, unrepresented, absent